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Joint Submission of the Amended Plan)
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Systems ("OSS"))

Docket 00-0592

INITIAL BRIEF ON REHEARING OF AMERITECH ILLINOIS

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INITIAL BRIEF ON REHEARING OF AMERITECH ILLINOIS

Illinois Bell Telephone Company ("Ameritech Illinois") hereby submits its Initial Brief on Rehearing. Rehearing was granted on two issues related to the January 24, 2001 Order in this case ("Order"). First, the Commission granted Ameritech Illinois's motion for rehearing to determine whether the Order's requirement that Ameritech Illinois (1) provide CLECs with pre-ordering loop makeup information on up to 10 loops per address *and* (2) devise some kind of "tag" for each loop so that CLECs can pick and requesting a specific loop ("10 loops plus tagging") complies with the law, particularly the "impair" test of Section 251(d)(2) of the Telecommunications Act of 1996 (47 U.S.C. 251(d)(2)) and FCC Rule 317 (47 C.F.R. 51.317). Second, rehearing was granted to address claims raised by certain CLECs regarding the Order's finding on direct access to Ameritech Illinois' back-office systems. For the reasons set forth herein, the Commission should revise the Order on the loop makeup issue and sustain the Order on the direct access issue.

The reasons why 10 loops plus tagging does not meet the Act's impair test, and thus cannot and should not be imposed as a matter of law, are straightforward:

- The loop qualification data and tools that Ameritech Illinois provides to CLECs already meet or exceed every legal requirement;
- Implementing a 10 loops plus tagging requirement would require substantial overhaul of numerous electronic systems and processes at substantial cost and diversion of resources – not only for Ameritech Illinois, but also for CLECs (who

ultimately must modify their own OSS interfaces to interact with the revised systems), and for consumers (whose xDSL service may be delayed by the need to revert to *manual* qualification, ordering, and provisioning processes);

- The costs, risks, and delays of 10 loops plus tagging far outweigh the alleged benefits, which remain entirely speculative; thus, 10 loops plus tagging fails the cost-benefit analysis of the totality of circumstances required by the impair test; and
- Finally, even if the Commission were to retain the 10 loops requirement, it should reconsider and remove the tagging requirement. That requirement, which appears to be unprecedented, was inserted only after the HEPO and without the benefit of any factual record, and would be by far the more intrusive, complex, and burdensome of the two requirements imposed by the Order.

ARGUMENT

I. THE 10 LOOPS PLUS TAGGING REQUIREMENT CAN STAND ONLY IF IT PASSES THE IMPAIR TEST.

The 10 loops plus tagging requirement goes beyond any of the FCC's requirements with respect to loop qualification, and therefore can stand only if this Commission independently finds that it passes the impair test of Section 251(d)(2) and FCC Rule 317(b). AT&T and Covad seem to contend that no "impair" test is necessary at all (even though the Commission granted rehearing for the express purpose of addressing that test), but the need for the impair test could not be more clear. The duty to provide loop qualification information is defined in the *UNE Remand Order*,¹ but the FCC has stated that "it is not self-evident from the *UNE Remand Order* that a BOC must provide loop make-up information on all loops that serve a particular address" and it has expressly held that an incumbent LEC that provides loop makeup information on just one loop is not "in violation of that order." *Kansas/Oklahoma 271 Order*,² ¶ 128. To be sure, the FCC also observed that state commissions could "impose additional obligations" in terms of

¹ Third Report and Order, CC Docket 96-98 (rel. Nov. 5, 1999).

² Mem. Opinion and Order, CC Docket 00-217, FCC 01-29 (rel. Jan. 22, 2001) ("*Kansas/Oklahoma 271 Order*").

loop makeup information, but only if those obligations are “consistent with the Act.” *Id.*, n.353. To be “consistent with the Act,” the state commission obviously must act in accord with the Act’s impair test in Section 251(d)(2) and the FCC’s interpretation of that test in Rule 317(b). Rule 317(b)(4) specifically provides that state commissions can impose unbundling requirements that exceed or differ from the FCC’s *only* if those additional requirements are first held to meet the impair test.

Plainly, the FCC (as the author of the *UNE Remand Order*) is best positioned to interpret the scope of that Order’s existing requirements, and the FCC’s interpretation of its own order must be given “controlling weight.” *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512 (1994). Thus, the 10 loops plus tagging requirement undeniably goes beyond the obligations imposed by the *UNE Remand Order* and FCC rules, and can be imposed only if this Commission first finds that such a requirement satisfies the impair test.

II. THE 10 LOOPS PLUS TAGGING REQUIREMENT DOES NOT MEET THE IMPAIR TEST.

The ultimate question under the impair test is whether the absence of an unbundling requirement would “materially diminish[] a requesting carrier’s ability to provide the services it seeks to offer.” 47 C.F.R. 51.317(b)(1). The question under the impair test is not just whether it would be technically feasible to unbundle something or whether CLECs might like a particular requirement. The Supreme Court rejected any such lax reading of the Act in *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 388-92 (1999) (“*IUB II*”) (vacating FCC’s unbundling rule in its entirety because FCC misread impair test to mean that “whatever requested element can be provided must be provided”). Rather, the test must be applied subject to “some limiting standard, rationally related to the goals of the Act.” *Id.* at 388.

The impair test ultimately requires a “fact-intensive” analysis of the “totality of the circumstances.” *UNE Remand Order*, ¶¶ 62, 142; 47 C.F.R. 51.317(b)(1). Among other things, the Commission must consider “the extent to which alternatives [to the proposed unbundling requirement] in the market are available as a practical, economic, and operational matter.” 47 C.F.R. 51.317(b)(2). The “alternative” to be evaluated here is the one that already exists, *i.e.*, the loop qualification capabilities that Ameritech Illinois already provides (and will provide in a few months with its committed enhancement). Thus, the question is whether Covad’s ability to provide services would be “materially diminish[ed]” if it continued to use the loop qualification capability Ameritech Illinois provides, as opposed to forcing Ameritech Illinois to provide 10 loops plus tagging.

As explained below, the answer is no, but the Commission does not even have to reach that question. Covad has completely failed to meet its burden of proving that a proposed unbundling requirement meets the impair test. It is a legal axiom that a party seeking relief – here, a CLEC seeking a new or expanded unbundling-related requirement on the incumbent LEC – bears the burden of proof. *See, e.g.*, I.L.P., Evidence § 21 (“The general rule is that the burden of proof rests on the party who has the affirmative of the issue”). The burden is not on the ILEC to conclusively prove the negative. Moreover, a CLEC is in the best position to provide *prima facie* evidence (if such evidence exists) to show how the absence of an unbundling requirement would impair that CLEC’s ability to provide service.

Covad, however, deliberately refused to address the impair test in its testimony, claiming it was irrelevant. Carter Direct (Ex. 1.0) at 6. Having elected not to present evidence on the key issue on which it bears the burden of proof, Covad failed to make a *prima facie* case, and as a matter of law cannot prevail.

A. What Ameritech Illinois Already Offers

Quite apart from Covad's complete failure of proof, the record and the totality of the circumstances here do not support any finding that CLECs' ability to provide service would be "materially diminish[ed]" unless Ameritech Illinois provides 10 loops plus tagging. To examine the "totality of circumstances" and conduct an impair analysis, the Commission must fully understand the alternatives that Ameritech Illinois provides to CLECs *absent* the January 24 Order. These alternatives – which are not exclusive, but rather are *all* available to CLECs – are discussed below.

1. *Inquiry by Telephone Number.* Ameritech Illinois accepts loop makeup requests based on a working telephone number ("WTN"). Because a WTN is assigned to a specific loop, Ameritech Illinois provides loop makeup on that particular loop. Mileham Direct (AI Ex. 3.0) at 3, 5. Significantly, a CLEC can submit as many WTN loop makeup inquiries for a single location as it likes – meaning that a CLEC can *today* obtain loop makeup on multiple loops at a single address. *Id.* at 5; Coelho Rebuttal (AI Ex. 3.1) at 4. Ameritech Illinois has committed to develop a "Batch DSL Planning Tool" capability that allows CLECs to submit up to 50,000 working telephone numbers at a time and receive loop makeup on all 50,000 loops within 24 hours. Tr. 1738-39. This capability is targeted for deployment in August or September of this year. *See* Tr. 1760.

2. *Inquiry by Address.* Ameritech Illinois also accepts loop makeup requests based only on an address. At present, Ameritech Illinois returns makeup information on the first loop to that address that its systems identify. In August of this year, however, Ameritech Illinois will deploy a significant enhancement to address-based inquiries. Mileham Direct (AI Ex. 3.0) at 8-

9; Coelho Rebuttal (AI Ex. 3.1) at 2. The enhancement, referred to as CR-69a,³ will process an address-based request by searching for a copper loop with no load coils (that is, a non-loaded copper loop). If such a loop exists, Ameritech Illinois will return makeup information on that loop. Mileham Direct (AI Ex. 3.0) at 7-8. A non-loaded copper loop is the first choice because it is compatible with all flavors of xDSL service. Tr. 1795 (“all of them [flavors of DSL] can always be served on the nonloaded copper loop”); Tr. 1834-36. Conversely, Ameritech Illinois searches for (and seeks to avoid) load coils because they inhibit *all* flavors of xDSL service. *See* Mileham Direct (AI Ex. 3.0) at 7-8; Tr. 1649-50, 1654. That makes sense, because Ameritech Illinois does not know what flavor of xDSL the CLEC wants to provide, so it searches first for a loop that works for all flavors.⁴

If no non-loaded copper loop exists at that location, Ameritech Illinois searches for a loaded copper loop and, if one exists, returns makeup information on that loop. Mileham Direct (AI Ex. 3.0) at 7-8; Tr. 1595-96. This is a logical second choice, because a copper loop is necessary for all but the slowest flavor of xDSL service, IDSL (Tr. 1794), and load coils can always be removed. If neither a non-loaded or loaded copper loop is available, the next choice is a Digital Added Main Line (“DAML”) loop, and the next choice after that is a loop served by Digital Loop Carrier (“DLC”) equipment. Mileham Direct (AI Ex. 3.0) at 7-8.

3. *DSL Tracking Inquiry Tool.* Ameritech Illinois also allows CLECs to obtain

³ This stands for Change Request 69a and is an internal identifier for Ameritech Illinois and its affiliates. CR-69 was a similar enhancement in the SWBT 8-state region and was completed on April 3, 2000. *See* Mileham Direct (AI Ex. 3.0) at 7-8.

⁴ True, there are also other types of “interferers” on a loop (such as “excessive bridged tap” or “repeaters” that can inhibit some forms of xDSL service to varying degrees. The CR-69a search focuses on load coils, because (i) that focus allows Ameritech Illinois to provide a mechanized loop makeup response within 120 seconds, while adding more and more complexity to the search logic would preclude *any* kind of response within the 120-second period (Tr. 1497); and (ii) interferers other than load coil do not totally disqualify a loop for xDSL service, so attempting to account for them during the loop makeup search would require some knowledge about the type of xDSL service the CLEC wants to provide, and it would require Ameritech Illinois to make judgment calls about what level of bridged tap or repeaters would be acceptable to different CLECs (Tr. 1654-55).

detailed information about theoretical loop length based on the zip code of end users in a particular wire center. Loop length is a factor in whether a loop can support different flavors of xDSL service, and the DSL Tracking Inquiry Tool (“DTI Tool”) lets CLECs very quickly determine, for any particular zip code and wire center, how many end users’ loops are less than 12,000 feet long (12 kilofeet, or 12 kft), how many are between 12 kft and 17.5 kft, and how many are longer than 17.5 kft. Mitchell Direct (AI Ex. 1.0), at 2-3. This is a powerful tool for CLECs trying to decide whether to market DSL service in particular areas, which is really one of the main purposes of loop qualification.

B. Ameritech Illinois’ Ordering And Provisioning Processes Work Extremely Well Without Tagging

In addition to understanding the various loop qualification tools offered by Ameritech Illinois, it is also important to understand how Ameritech Illinois’ ordering and provisioning systems work today when a CLEC places an actual order for an unbundled loop. This is relevant because the January 24 Order’s “tagging” requirement does not just affect the provision of loop makeup information at the pre-ordering stage; it affects the way in which a CLEC’s ensuing order would be processed and provisioned.

At present, when a CLEC places an order for an unbundled loop capable of providing xDSL service, the loop to fill that order is selected by Ameritech Illinois’ Loop Facility Assignment and Control System (“LFACS”). LFACS chooses the optimal pair for xDSL service that is available in its database at that moment in time. Zills Rebuttal (AI Ex. 2.1) at 3. In simple terms, the process works as follows. An actual CLEC order for an unbundled loop is submitted on a form called a Local Service Request (“LSR”). In contrast to a loop qualification request, which just contains an address or working telephone number, an LSR contains much more detailed information about what the CLEC needs. Zills Direct (AI Ex. 2.0) at 3-4. After

the order is received, an upfront system called the Service Order Analysis and Control System (“SOAC”) analyzes the loop order and develops an Outside plant Equivalence Code (“OEC”) with 15 parameters that describe, from an outside plant engineering perspective, the relevant characteristics of the type of service (*e.g.*, xDSL) that the loop will be used to provide. *Id.* at 4. LFACS gives each facility in the outside plant a weighted value based on its ability to provide xDSL service. *Id.* Thus, for example, a copper loop would have a higher weighted value than a DAML loop. When multiple facility types or pairs are available to serve a particular address, LFACS applies these weighted values and analyzes both the physical attributes of the facilities (*e.g.*, the presence of load coils or repeaters) and other administrative guidelines to pick the optimal facility for the order. *Id.*

All of this occurs in a mechanized fashion, and LFACS is used for all services, not just xDSL. There is no guarantee that the loop selected by LFACS will be the same one on which makeup information was provide at the pre-ordering, loop qualification stage. Zills Direct (AI Ex. 2.0) at 5-6. First, the loop on which makeup information was given may have been assigned to another customer before the CLEC placed its order. (A CLEC can reduce this risk by placing an order immediately after receiving makeup information, but the Order quite properly prevents CLECs from reserving loops and thus preventing other CLECs from accessing them.) Second, LFACS might find a better loop than the one located at the qualification stage. *See* Zills Direct (AI Ex. 2.0) at 5. For example, LFACS considers and weighs factors like the presence of repeaters and network administrative guidelines that are not considered at the qualification stage, and thus may find a loop that has similar characteristics to the one seen at qualification, but that is better overall. *See id.*

Third, LFACS might “create” a better loop than the one seen at the qualification stage. Mileham Direct (AI Ex. 3.0) at 10-11; Zills Direct (AI Ex. 2.0) at 4-5; Tr. 1814-15. For example, a loop makeup response may find no non-loaded copper loops at a particular address and thus return information on a loaded copper loop. If the CLEC went ahead and placed an order (perhaps because it was willing to pay for loop conditioning to remove the load coils), LFACS would not simply assign the loaded copper loop. Rather, LFACS would first look for a way to provide a non-loaded copper loop and, if possible, to create one by performing a free “line and station transfer,” which swaps the loaded copper loop with an available non-loaded loop that may have been assigned to another address. Zills Direct (AI Ex. 2.0) at 4-5; Tr. 1814-15. The different loop alternatives that might be available via line and station transfers or other network modifications are not known at the qualification stage, but may be more compatible with the CLEC’s order than anything seen at the qualification stage. Tr. 1814-15; Mileham (AI Ex. 3.0) at 10-11.

C. What Ameritech Illinois Would Need To Change To Provide 10 Loops Plus Tagging

In addition to considering the usefulness to CLECs of what Ameritech Illinois provides without a 10 loops plus tagging requirement, the “totality of the circumstances” analysis under the impair test also requires consideration of what Ameritech Illinois would have to do to fulfill that requirement. The 10 loops plus tagging requirement would force major changes to three fundamental areas of Ameritech Illinois’ Operations Support Systems (“OSS”) – the pre-ordering, ordering, and provisioning functions. Within each of these areas, there would have to be changes throughout many of the systems and processes that work together to perform these OSS functions: Ameritech Illinois’ and CLECs’ electronic interfaces; Ameritech Illinois’ middleware systems; and Ameritech Illinois’ back office systems and databases. Indeed, the

FCC has recognized that enhancements to loop qualification processes can require “extensive software development in [the ILEC’s] interface systems,” changes to middleware or “gateway” systems, and to back office or “underlying systems,” and changes to the “data exchange” between *all* of these systems. *Massachusetts 271 Order*,⁵ ¶ 62 (discussing Verizon’s enhancement to provide loop makeup in real time and in electronically parsed fields by October 2001 – things that Ameritech Illinois already does today). The systems and process changes that would be required under a-10 loops plus tagging requirement were summarized by Mr. Hamilton during the hearing (Tr. 1740-42):

In order to do ten loops plus tagging, three significant things would have to happen:

One, is we’d have to have a way to pass that [ten loop makeup and tags] information [between systems]. We’d have to expand all of the fields today to pass that information back and forth between LFACS[,] ARES, SAM, A[E]MS, through the OSS interface[,] either EDI or CORBA[,] and back to the customer. So, first off, it’s the provision of allowing for all of that information to go back [to different systems and to the CLEC]. Those many, many fields.

It would also require, secondly, that all of the [CLEC] customers who want to receive that information would have to modify their means of accepting that information back across the interface. If we just modified our part and we sent that information back, it wouldn’t – it wouldn’t make sense. It would be sending information that would have nowhere to fit across that – that interchange that’s happening between the customer and ourselves.

And then the third thing that would have to happen is we, in all likelihood, would have to modify the applications or possibly the hardware to handle the volume of transactions. You’re talking about multiplying the number of actual multiple pieces of information going back and forth across all of these systems. Some of them I would – I would think most likely in either A[E]MS or SAM you’re going to have some modification to allow the network to handle that amount of additional band width.

So we may have to either upgrade the capability of the platforms that it currently rides on, or we may have to split the platform into multiple parts if there is no box capable of handling that volume of transactions.

⁵ Mem. Opinion and Order, CC Docket 01-9, FCC 01-130 (rel. Apr. 16, 2001) (“*Massachusetts 271 Order*”).

When recalled to the stand, Mr. Hamilton reiterated and expanded on these points (Tr. 1910-13):

Basically the issue [of the modifications necessary to do 10 loops plus tagging] boils down to two things. One[,] flowing the information from one system to the next. And two, telling that system how to use the information.

If you look at the diagrams [Cross Exhibits 10, 13, and 14], and at the systems that are used in order to, one, take a request, turn it into an order and flow it to the systems for provisioning. And then two, get it in the provisioning process so that work can be sent to technicians who then have to perform those items in order to turn up the service, [and] these systems have to be able to accept new fields of information that tell it what particular loop to use.

* * *

Let's talk first about providing multiple loops. Multiple loops would be provided back [from back-office databases] in the preorder process, and we would have to make alterations to the systems to allow the amount of information that's been transmitted back to be changed.

That would involve changes to the interface, changes to the middle[ware], changes to A[E]MS, and potentially changes to the databases themselves in order to allow them to accept a different type of query, if that's the most effective way to do it. The back end database may or may not be impacted, but certainly those other systems would be.

BY JUDGE MORAN:

Q. Let me ask you, those systems, would they then require system changes on the CLEC side?

A. If they [the CLEC] were ordering across the [electronic] interface, yes, they would. They would have to make changes to accept information in a different format. And that information would look similar to the way it does today, but there would be multiple pieces [o]f it. This loop would look the same and then there would be another loop and another loop, until either the number of loops was exhausted or 10 was reached.

Mr. Hamilton then focused on the specific issue of "tagging" every individual loop for identification during the pre-ordering, ordering, and provisioning processes. As he explained, there is no individual "tag" for each loop anywhere in Ameritech Illinois' systems today, and creating and assigning such loop-specific tags – plus creating a way to pass such tags through

and have them recognized by multiple systems, and the CLECs, in the pre-ordering, ordering, and provisioning stages – would be a huge, and disruptive, undertaking.

As far as the 10 loops would go, it would not [a]ffect ordering or provisioning, *unless you allowed for the loop to be identified in some unique way. And that's the big key.* It was asked earlier about taper codes and circuit ID's and whether they would be used as a unique identifier. The problem is taper codes and circuit ID's are not necessarily unique to that loop.

In some cases the circuit ID might be and in other cases the circuit ID is not. It might be a multiple pair circuit carrying the same circuit ID off of cross multiple pairs. The taper code is a kind of engineering lingo to tell them what the expected makeup will be. So this pair will go out with this taper code, the next one may go out with a different taper code, . . . and then one of the others [taper codes] might get reused because its loop composition is similar to one that was sent earlier. *So it [the taper code] isn't unique to that particular loop.*

* * *

For the tagging, what has to happen is in the preordering portion we have to find some way to generate for every loop that is returned, some type of unique identifier. So it would require the addition of a field that all of those systems, the interface, A[E]MS, SAM and the database would all understand. So in that case all of those systems would definitely have to be modified to get some new fields or fields in that say, this is the loop we are going to uniquely identify this loop, through the life of it, from the time it's requested until the time it's in service.

Then in the ordering process you would have a similar type of requirement. In order for that loop to come in, there would have to be a field that can be submitted across the interface, and again through the middle[ware], and into the ordering systems, such as Tellis Gateway, Exact, SAM, that information and anywhere that the order flowed, up until the time that it got generated and assigned, it would have to carry that identifier.

So *every system* that would need that identifier to understand how to use that tagged circuit [would have to be modified], first of all to determine whether that tagged circuit is available . . . and then what to do if it is and then what to do if it's not, it would need to get that information, it would need to interpret that information, it would need to perform some action and then pass that information on to the next system down the line.

* * *

The biggest issue is that some of these systems we don't actually modify, [because] the code is actually owned by a separate vendor in some case[s]. So we would have to go to that vendor, we would have to say we need you to create a new field, and here is what we need to tell the system to do every time it sees that field. That vendor

would then tell us how long that is going to take, how much it's going to cost, we would negotiate hopefully to get the best time scheduling and cost that we can, and then at some point move forward with that work. But a number of systems that that information has to flow through, such as T[I]RKS, such as FACS, such as LFACS and ARES are not our systems and thus we would have to negotiate with vendors.

* * *

If you could have a unique identifier for every pair in the network, it would . . . be a string long enough to accommodate 30 million combinations.

Tr. 1913-14, 1917-19, 1925 (emphasis added); *see also* Cross Ex. 21 (high level analysis of the scope, complexity, time, and costs of complying with either the 10 loop requirement or the tagging requirement).

Mr. Hamilton's summary, which is supported by all of Ameritech Illinois' testimony, demonstrates the extreme scope and complexity of the changes that would have to be made to Ameritech Illinois' systems and processes for pre-ordering, and ordering, and provisioning simply to accommodate a single CLEC's demand. Indeed, the extent and complexity of the changes required to electronic systems would likely force Ameritech Illinois to revert to manual processing. Zills Rebuttal (AI Ex. 2.1) at 5-9. Further, they would divert personnel from other OSS projects that benefit all CLECs. Mitchell Rebuttal (AI Ex. 1.1) at 3-4. Clearly, these costs outweigh any alleged benefits to Covad, which (as we describe below) relies entirely on the assertion that 10 loops plus tagging might be helpful in a few extreme cases, rather than showing that the change would have any real impact on its daily ability to serve the great mass of customers.

D. Covad Has Not Shown That Its Ability To Provide Service Is Materially Impaired By Lack Of Access To 10 Loops Plus Tagging

Although Covad deliberately refused to address the impair test in its testimony, the arguments it will make in favor of a 10 loops plus tagging requirement are easy to predict. The

alleged benefits of such a requirement, however, are illusory or *de minimis* at best. The simple fact is that Covad and other data CLECs are fully able to – and do – provide competitive xDSL service today and are not in any way, much less materially, impaired in their ability to provide those services by the lack of a 10 loops plus tagging requirement.

Even without 10 loops plus tagging, Covad can readily determine what options it has to provide xDSL, either for an address or a geographic area. It can submit requests by telephone number for multiple numbers at an address; it can soon use the Batch DSL Planning Tool to get loop makeup on 50,000 numbers in a day; and it can use the DTI tool to quickly determine whether an area is served by fiber facilities.

Further, with the CR-69a enhancement CLECs will learn a great deal more about the loops that serve an address from the loop on which makeup information is returned. For example, if a loaded copper loop is returned, the CLEC will know that there are no non-loaded copper loops to that address. Likewise, if the CLEC receives makeup information on a DLC loop, it will know that there are no non-loaded or loaded copper loops and no DAML loops to that address. This, too, gives Covad – in about 120 seconds – a very good idea of what options it would have for serving that customer using an unbundled loop.

The CR-69a enhancement also is significant because it will largely obviate Covad's primary concern when this issue was raised last fall, which was that Covad would receive makeup information on a loop that would have required conditioning charges when another loop was available that required no conditioning. *See* Order at 91. By searching for a non-loaded copper loop as the first priority, CR-69a will ensure that a CLEC that submits an address-based request will never get makeup information on a loaded copper loop (which requires conditioning) when a non-loaded one is available. *See* Mileham Direct (AI Ex. 3.0) at 7-8;

Coelho Rebuttal (AI Ex. 3.1) at 2. Further, the rates for conditioning will in all likelihood be reduced by more than 90% very soon (Graves Direct (Staff Ex. 1) at 6), which renders the alleged economic impact of potentially “unnecessary” conditioning largely insignificant.

Another Covad theme is that the Commission should order 10 loops plus tagging because other incumbent LECs already do it. As a threshold matter, the Commission should ignore all of these assertions, as it did last time. A review of the Analysis and Conclusion sections of the HEPO and January 24 Order reveals that neither the Hearing Examiners nor the Commission gave any weight to claims regarding what other ILECs may or may not do. In addition, although Covad asserts that BellSouth, Verizon, and Qwest all provide loop makeup on multiple loops, it produced absolutely no documents or *independent* evidence describing what those companies *actually* do, so nobody has any idea of the details. Tr. 1515.

This gap in Covad’s presentation is especially important: not only because there is no way for Ameritech Illinois or the Commission to test Covad’s claims, not only because each ILEC’s systems and processes are different (*see* Tr. 1818), not only because Ameritech Illinois’ overall loop qualification processes appear to be well ahead of Verizon’s processes (*see* Coelho Rebuttal (AI Ex. 2.1) at 10-11), and not only because nothing those other ILECs may or may not do appears to have been ordered by a state commission (Tr. 1515), but also because when Covad actually did produce documents (regarding BellSouth) those documents undermined Covad’s allegations. *See* Zills Rebuttal (AI Ex. 21) at 4-5, 7-8). Specifically, although Covad’s witness claimed that BellSouth provides “exactly the same OSS functionality as the Commission ordered here” (Szafraniec Rebuttal (Covad Ex. 2.0) at 9), that is demonstrably incorrect. BellSouth’s documents showed that BellSouth does not do “tagging” as this Commission ordered, but rather uses a “reservation” system, which this Commission refused to adopt because

of competitive concerns. Zills Rebuttal (AI Ex. 2.1) at 8, citing Szafraniec Rebuttal, Att. 1 at 6. The documents also showed that BellSouth reserves the right to provision a loop different than the one the CLEC picks if it wants to. *Id.* at 4-5, citing Szafraniec Rebuttal, Att. 3 at 9.

In sum, the totality of the circumstances show no material or substantial impairment of any CLEC's ability to provide service due to a lack of 10 loops plus tagging. That alone defeats any basis for the 10 loops plus tagging requirement. In addition, the chart in Attachment A hereto summarizes the various factors listed in FCC Rule 317(b) and how they too support a finding of no impairment.

III. EVEN IF THE COMMISSION WERE TO RETAIN A 10 LOOP REQUIREMENT, THE TAGGING REQUIREMENT SHOULD BE REMOVED.

Although Covad may view the 10 loops plus tagging requirement as a single piece, the 10 loop part and the tagging part can be separated. It is important to do so because the impacts of each requirement on Ameritech Illinois are distinguishable and, quite frankly, the tagging requirement is significantly more onerous and problematic (not that the 10 loop requirement would be easy to implement), as it goes to the core of Ameritech Illinois' longstanding systems and processes for processing orders, provisioning service, and overseeing its network inventory in the most efficient manner. Tr. 1913-14.

A. The Rehearing Record Supports Removal Of The Tagging Requirement

At the outset, it is important to recall the history of the tagging requirement. Tagging was not Covad's idea. Covad wanted makeup on 10 loops plus the ability to reserve a loop for later ordering. The HEPO adopted a 10 loop requirement but refused to order reservation. The HEPO contained no tagging requirement and, indeed, imposed no requirement at all with regard to ordering (as opposed to *pre-ordering*). The January 24 Order, however, adopted the tagging

concept (proposed by Staff) wholesale – apparently assuming that tagging would not be difficult to implement.

Now, however, the Commission can make a fully-informed decision on tagging based on a robust record — and that record indicates that tagging would indeed be incredibly difficult to implement. The record also shows that whatever they may or may not do with regard to loop makeup information, no other ILEC provides “tagging.” And it is also significant that the FCC so has never ordered anything close to tagging with regard to OSS pre-ordering or ordering functionalities. For all of these reasons, the post-HEPO tagging requirement should, upon reflection, be removed.

As discussed above, tagging would affect pre-ordering, ordering, and provisioning, as the it would require Ameritech Illinois to assign a tag to each loop at the pre-ordering stage and then allow CLECs to resubmit that tag and have it be used in the ordering and provisioning processes. Order at 90-91. At present, however, there is no marker or identifier for every loop in Ameritech Illinois’ systems that could be used for tagging purposes. *See Zills Rebuttal* (AI Ex. 2.1) at 6; Tr. 1813, 1913-14, 1917-19. Thus, Ameritech Illinois would not only have to create a means of tagging more than 20 million loops in the Ameritech territory, but also modify all of the systems involved to allow the systems to recognize and use that tag. Tr. 1913-14, 1917-19. And the CLECs would have to modify their interfaces, too, in order to deal with the new tag (whatever it would be). Tr. 1741, 1912-13; *Mitchell Rebuttal* (AI Ex. 1.1) at 2.

The process to create a tagging mechanism and ways for all the involved systems to recognize and use it is estimated to take a minimum of 18 months. Cross. Ex. 21; *Mitchell, Rebuttal* (AI Ex. 1.1) at 2; *Coehlo Rebuttal* (AI Ex. 3.1) at 13. Until such a mechanized capability were fully in place, Ameritech Illinois’ primary (and perhaps only) option for

provisioning tagged loop orders would be manual processing. *See Zills Rebuttal* (AI Ex. 2.1) at 5-9. That would be a decisive step backwards. This Commission, like the FCC, has an expressed a preference for electronic OSS processes. By requiring tagging, the Commission would be abandoning that policy, at least for a significant time, thereby making it more difficult for CLECs' customers to get xDSL loops provisioned.

B. Tagging Is Severable From The 10-Loop Requirement

Moreover, and importantly, to the extent the Covad believes there would be benefits to getting makeup information on 10 loops, those alleged benefits would still be obtained even without a tagging requirement. The purpose of loop qualification is not to designate a loop for ordering, but rather to tell the CLEC whether it seems likely that an unbundled loop in a particular area will be able to provide xDSL service. In other words, it is a tool to plan for marketing. If the alleged benefits of seeing makeup information on 10 loops is that the CLEC gets a better view of the potential options, those benefits still exist without tagging. The only issue at that point is how quickly the CLEC inputs its order to Ameritech Illinois' nondiscriminatory, first-come first-served provisioning process. Also, if the CLEC actually uses loop qualification as a means of "data mining," *i.e.*, gathering information about the ILEC's network in general for use in marketing planning (as many CLECs appear to do), gathering information on 10 loops per address would serve that purpose equally well with or without tagging.

C. Tagging Is An Improper "Superior Quality" Requirement

Finally, it is clear that Ameritech Illinois has no readily available means today to tag every single individual loop for pre-ordering, ordering, and provisioning, and that to develop such a means would require an entirely new capability – one that is not provided to Ameritech Illinois' retail customers or affiliates. *Zills Rebuttal* (AI Ex. 2.1) at 6. A tagging requirement

would thus violate the 1996 Act by requiring Ameritech Illinois to provide service that is superior in quality to what it provides to itself or its affiliates. The Eighth Circuit has held, in what is now a binding and non-appealable order, that the 1996 Act does not allow regulatory dictates that force ILECs to give CLECs service that is superior in quality to what the ILEC provides to itself or its affiliates. *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 757-58 (8th Cir. 2000), *cert. granted on other issues*, 121 S. Ct. 878 (2001). The FCC recognized this rule when it declined to require ILECs to create any new databases to provide loop makeup information (*UNE Remand Order*, ¶ 429). Moreover, the Commission's January 24 Order itself acknowledges (at 18) "that LECs have no obligation to provide better service, or to implement improved procedures or procure and deploy updated facilities in the provision of OSS. . . . Clearly, therefore, the FCC requires parity, but only parity." The exact same principle bars any requirement to create a tag for every single loop in the network solely to pass the tag along to CLECs.

IV. DIRECT ACCESS TO BACK OFFICE SYSTEMS

Ameritech Illinois agrees with both the reasoning and result of those portions of the Commission's Order (Issue 19(b)) that denied the CLECs unfettered "direct access" to back office systems. The CLECs apparently do not challenge that result; they seek only to edit parts of the Commission's reasoning. Ameritech Illinois intends to respond to any bases the CLEC brief attempts to offer in support of their unusual request.

CONCLUSION

For the reasons set forth herein, the Commission should remove the 10 loops plus tagging requirement and retain its denial of direct access to back office systems as being barred by law.

Respectfully submitted,

AMERITECH ILLINOIS

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CERTIFICATE OF SERVICE

I, Demetrios G. Metropoulos, an attorney, hereby certify that I caused a copy of the foregoing Initial Brief On Rehearing Of Ameritech Illinois to be served via electronic mail to the Hearing Examiners and all Counsel of Record on this 11th day of June, 2001.


Demetrios G. Metropoulos